

MAINE STATE LEGISLATURE

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MINORITY

L.D. 1665

Date: 3-25-10

(Filing No. S-470)

LABOR

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 630, L.D. 1665, Bill, "An Act To Prevent the Spread of H1N1"

Amend the bill by striking out the title and substituting the following:

'An Act To Protect Sick Workers and the Public'

Amend the bill by striking out everything after the title and before the summary and inserting the following:

'Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §637 is enacted to read:

§637. Absence for illness

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employee" means a person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment but does not include an independent contractor.

B. "Employer" means any private or public employer, including the State and political subdivisions of the State.

C. "Family member" means an employee's child, spouse, parent or domestic partner as defined in section 843, subsection 7.

D. "Illness" means a physical or mental illness, injury or medical condition.

2. Prohibition against discharge or disciplinary action. An employer may not discharge, demote, suspend, discipline or otherwise discriminate against an employee or threaten to take any of these actions against an employee because of the employee's absence, up to 5 days in a 12-month period, from the employee's regular work hours if the absence is due to illness of the employee or of a family member of the employee or

COMMITTEE AMENDMENT

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because the employee otherwise exercises rights granted under this section, including, but not limited to, actions taken in order to enforce this section pursuant to subsection 6.

Nothing in this section prohibits an employer from taking employment action against an employee for an absence from work that is not protected by this section or other applicable law. An employer may adopt reasonable written policies, in accordance with rules of the Department of Labor, regarding implementation of this section.

3. Notification. An employee shall make reasonable efforts to notify the employer when the employee will not report to work at the appointed time due to illness.

4. Equivalent compensation. An employer providing an employee with compensated leave without penalty for reasons consistent with this section that is immediately available to the employee at the time of an illness and is equal to or greater than the protection provided in this section is deemed to have satisfied all of the obligations imposed by this section.

5. Relationship to collective bargaining. This section applies to employees covered by a collective bargaining agreement unless the agreement provides uncompensated or compensated leave that may be used without penalty for reasons consistent with this section and that is immediately available to the employee at the time of an illness and is equal to or greater than the protection provided in this section.

6. Enforcement. A civil action may be brought in the appropriate court by an employee against an employer to enforce this section.

A. The court may enjoin any act or practice that violates or may violate this section and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this section. The court also may:

(1) Award damages equal to the wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation; or

(2) Order the employer to pay liquidated damages of \$100 to the employee for each day that the violation continued.

B. The court also may order the employer to pay an additional amount as liquidated damages equal to the amount awarded under paragraph A if the employee proves to the satisfaction of the court that the employer's violation was willful.

C. In any action brought pursuant to this section, in addition to any judgment awarded to the employee, the court shall award reasonable attorney's fees and other costs of the action to be paid by the employer.

7. Rules. The Department of Labor shall adopt rules to implement and enforce the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

SUMMARY

This amendment prohibits an employer from discharging, demoting, suspending, disciplining or discriminating against an employee who misses work or comes to work late for no more than 5 days in 12 months due to illness of the employee or of a family

COMMITTEE AMENDMENT

1 member of the employee. The employee must make reasonable efforts to notify the
2 employer at the time of the illness. The amendment does not prohibit an employer from
3 taking employment action against an employee for taking time off that is not protected by
4 this or other applicable law. The Department of Labor is required to adopt routine
5 technical rules to implement this provision. The employee may seek relief from a
6 violation of this provision by bringing a civil action in the appropriate court.

FISCAL NOTE REQUIRED
(See attached)



Approved: 03/24/10 *MRC*

124th MAINE LEGISLATURE

LD 1665

LR 2134(02)

An Act To Prevent the Spread of H1N1

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Labor

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil suits.

The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the Department of Labor associated with rulemaking can be absorbed within existing budgeted resources.